THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.16225 of 1995

Date: 07.03.2007

Between:

Padmaja Enterprisesand others.

....Petitioners

And

The State of Andhra Pradesh, rep., by its Secretary, Revenue Secretariat, Hyderabad and others.

....Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.16225 of 1995

O R D E R:

The petitioners seek a writ of Mandamus, to declare the action of the respondents in trying to interfere with their possession as illegal, unjust and null and void and consequently, to restrain them from interfering with their possession over the land and property situated in Survey No.49 of Yousufguda, Hyderabad. They also claimed compensation of Rs.50,00,000/- for the illegal demolition of some of the constructed items.

Briefly stated, the background, in which the writ petition is filed, is as under:

The land in Survey No.29 of Yousufguda Revenue Village admeasuring Ac.67.18 guntas was owned and held by one Nawab Fakhrul Mulk. During the revision survey, several survey numbers came to be carved out of it, including survey No.49. Nawab Fakhrul Mulk died in the year 1934. He was buried in a Tomb constructed in part of that area. Out of the total extent of Ac.67.18

guntas of land held by the Nawab Fakhrul Mulk, Ac.60.18 guntas was acquired by the Government for establishing T.B.Hospital and other institutions. As regards the balance of Ac.7.00 and other properties held by the family, one of the daughters of Nawab Fakhrul Mulk, by name Saradarunnisa Begum, filed O.S.No.116 of 1356 Fasli in the Court at Darul Qazaath. A preliminary decree was passed on 21.11.1947. Due to the change in the adjudicatory system, the suit came to be transferred to the High Court and re-numbered as O.S.No.9/1 of 1951.

Several Miscellaneous Petitions came to be filed, one after the other, before this Court. One such petition was Application No.14 of 1975, wherein the dispute related to the extent of the property covered by the Tomb, the nature of administration of the Tomb and the persons to be entrusted with it. After hearing the parties at length, this Court passed an order, dated 15.09.1975, holding that such part of the area, which is covered by a compound wall constructed around the Tomb, would alone become part of it and any area outside the compound wall, cannot be treated as its part. As regards administration, a particular course of action was indicated.

The petitioners claim that they have purchased land out of Survey No.49, which, in turn, was part of old Survey

No.29, through different sale deeds, between August and December 1994, and are in possession and enjoyment of the same. The petitioners complain that the respondents are trying to interfere with their possession without any basis and right. It is their case that on an earlier occasion W.P.No.8150 of 1995 was filed, almost for similar relief, and that the said Writ Petition was disposed of on 12.06.2002, directing the respondents therein not to interfere with their possession over the said property. The necessity to file the present writ petition is explained, by stating that they were not aware of the notification issued by the A.P. Wakf Board on 16.08.1989 in relation to land in Survey No.49 and that they have filed a separate writ petition being W.P.No.12980 of 1995. It is also urged that the 4th respondent herein tried to interfere, despite the orders in W.P.No.8150 of 1995, on the ground that he is not a party to the said writ petition.

In this writ petition, two counter affidavits are filed on behalf of respondent No.4. In the first counter affidavit filed in August 2004, the history of the land in Survey No.29 is traced. It is stated that after the individual survey numbers were carved out, a town survey was conducted and Survey No.49 was correlated to Town Survey Nos.4 to 11 of Block D, Ward No.7 and the same is classified as Government Poramboke. On this basis, the right of the

Government over the land is claimed. In para (6) of the counter affidavit, it is stated that the petitioners have illegally occupied the Government land, under the guise of the sale deeds, and are enjoying the same without any lawful title.

Another counter affidavit is filed by the 4th respondent on 26.06.2006. In this, it is stated that being not a party to O.S.No.9/1 of 1951, the Government is not bound by the various orders and decrees passed therein. It is also contended that the notification issued by the A.P.Wakf Board on 16.03.1989 is not binding on it. Certain subsidiary contentions have also been advanced.

Sri D.Prakash Reddy, the learned senior counsel appearing for the petitioners submits that the respondents are taking advantage of an erroneous entry in the revenue records not preceded by any notice to the effected parties. He contends that on noticing that several orders came to be passed in respect of the land in Survey No.49, by this Court, in O.S.No.9/1 of 1951, the Government itself sought leave of this Court, to file a suit to protect its rights, and that such a permission was accorded in the year 1981. He contends that the respondents did not move in the matter thereafter, but are trying to high handedly interfere with the possession of the land.

The learned Government Pleader for Revenue, on the other hand, submits that the town survey has taken place two decades ago and no proceedings were initiated by the petitioners or their predecessors assailing entries in the town survey. He contends that as long as the classification of the land remains as Government Poramboke, the petitioners do not have any right over it.

The petitioners seek directions in the form of injunction, to restrain the respondents, from interfering with their possession over the land, in question. If there exists any serious dispute as to the possession over the property, this Court would be reluctant to grant such relief. In the instant case, the 4th respondent categorically stated that the petitioners are in possession of the land as encroachers. However, serious dispute is raised as to the title of the petitioners over the land.

Not withstanding the dispute as to title, once the respondents have admitted the possession of the petitioners over the land, they cannot interfere with the same, except by taking recourse to law. Hardly any support is needed for this proposition. In para (5) of the counter affidavit filed in August 2004, it is stated as under:

> "Further it is submitted that some persons claiming as Legal heirs of Nawab Fakrul Mulk have

> approached the High Court for partitions of movable and immovable properties of the said Nawab Fakrul Mulk including that Sy.No.49 of Yousufguda village. The Hon'ble High Court has appointed (2) Advocates as Receiver-cum-Commissioners in O.S.No.9/1 of 1951 to manage the said properties. The receiver-cum-commissioner had divided the properties in Sy.No.49 of Yousufguda village among the so called legal heirs of Nawab Fakru Mulk, duly conducting a panchanama and handed over the possession basing on the decree obtained from Hon'ble High Court accordingly all this happened without any notice to the Government through the Government interest is involved. The government filed a petition before the Hon'ble Court to grant permission to sue the receiver-cum-commissioner and the Hon'ble Court was kind enough by its order dt:23-1-1981 to permit to file a suit against the receiver."

From this, it is evident that the respondents themselves felt that the effect of the various orders passed in O.S.No.9/1 of 1951, can be overcome, only by suing the receiver-cum-commissioner, or other persons claiming through him, in a proper form and permission of the High Court is necessary for that purpose. Such a permission was accorded on 23.01.1981. The nature of steps that have been taken thereafter is not disclosed. Without initiating such proceedings, the respondents cannot interfere with the possession of the petitioners over the land, in question.

Therefore, the Writ Petition is disposed of, directing the respondents not to interfere with the possession of the

petitioners over the land in Survey No.49 of Yousufguda, Hyderabad, without initiating appropriate proceedings before the competent Court of law. There shall be no order as to costs.

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07.03.2007

JSU